IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 66 of 2003

LRS OF DECD. PATEL BABUBHAI MOHANBHAI

Versus

LRS OF PATEL BHAGWANBHAI JETHABHAI

Appearance:

1. Civil Revision Application No. 66 of 2003

MR DK ACHARYA for Petitioner No. 1-2/4

..... for Respondent No. 1

MR KETAN I ACHARYA for Respondent No. 1/1-2

MR YV SHAH for Respondent No. 3

NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of Order: 09/05/2003

ORAL ORDER

This Civil Revision Application is preferred challenging the order dated 30-12-2002 passed below exh. 17 in Regular Civil Suit No. 224 of 2002 by the Civil Judge (SD), Mehsana.

The original plaintiffs filed Regular Civil Suit No.224 of 2002 with the prayed made in the plaint. The petitioner being defendants filed application exh. 17 raising preliminary issue regarding jurisdiction of the civil court and maintainability of the civil suit.

Learned counsel for the petitioners submitted before the trial Court that the Civil Court has no jurisdiction to try and hear the suit under the provisions of the Gujarat Town Planning and Urban Development Act and the suit is barred by the provisions of the said Act. The trail Court after giving reasonable opportunity of hearing to the parties concerned, found that the allegation that the Gujarat Town Planning Authority acted with malafide intention and those actions are subject to the judicial scrutiny. Learned counsel for the petitioners relied on certain authorities. The

trial Court accepted the same and dismissed the application exh. 17. Therefore, the present civil revision application is preferred before this Court.

I have carefully considered the submissions made by the learned counsel for the parties and perused the relevant material on record.

General law is that whenever any legal issue is raised before the trial Court regarding maintainability of the proceedings or jurisdiction to decide the proceedings, the Court is required to decide that preliminary issue first. As per the assertions made in para 6 of the plaint allegations of malafide actions and intention have been made against the officers i.e. defendants no. 3 and 4 and they have also colluded with the other defendants and they are trying to snatch away the possession of the property in question.

In the present case preliminary issue regarding maintainability of the suit or jurisdiction of the trial Court to hear and decide the suit, has been raised by the petitioners before the trial Court by way of filing the application exh. 17 in Regular Civil Suit No. 224 of 2002. Therefore, it would be just and proper to direct the trial Court to decide the application exh. 17 within a stipulated time after affording the reasonable opportunity or leading evidence and hearing the parties concerned.

In the facts and circumstances of this case and considering submissions made by the leaned counsel for the parties and maerial on record, the impugned order dated 30-12-2002 passed below exh. 17 in Regular Civil Suit No. 224 of 2002 passed by the Civil Judge (SD), Mehsana is quashed and set aside and the trial Court is directed the decide the application exh.17 filed in R.C.S. No. 224 of 2002, raising preliminary issue regarding maintainability of the suit and jurisdiction of the court in accordance with law, within two months from the date of presentation of a certified copy of this order after affording reasonable opportunity of hearing and leading evidence to the parties concerned. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

/JVSatwara/